## **Minneapolis Planning Department**

350 South Fifth Street, Room 210 Minneapolis, MN 55415-1385 (612) 673-2597 Phone (612) 673-2728 Fax (612) 673-2157 TDD

## **MEMORANDUM**

DATE:

April 23, 2002

TO:

Council Member Gary Schiff, Chair, Zoning & Planning Committee and

Members of the Committee

FROM:

Tom Leighton, City Planner

SUBJECT:

Appeal of the decision of the Zoning Board of Adjustment for Eddie

Johnson

Eddie Johnson has filed an appeal of the decision of the Zoning Board of Adjustment. The applicant operates a day care and after-school care business at the subject property. She requested a variance of the height of the north interior fence from 6 feet to 10 feet in order to keep a basketball in the yard when her after-school kids play basketball. The Board of Adjustment denied her application.

The variance is supported by the applicant's neighbor. The Folwell Neighborhood Association has considered the application and recommends that the variance not be granted. Attached is the original Planning Department report, and documentation associated with the appeal.



City of Minneapolis
Inspections Division of Regulatory Services
Office of Zoning Administration
250 South 4<sup>th</sup> St. Room 300
Minneapolis MN 55415-1316
612-673-5836
Fax 612-673-3173

## Notice of exception To the Decision of the Board of Adjustment

A complete application<sup>1</sup> shall be filed in the zoning office by 4:30 p.m. within ten (10) calendar days of the date of decision by the board of adjustment.

## **MAILING/OFFICE ADDRESS:**

Zoning Administrator Office of Zoning Administration Public Service Center 250 S. 4<sup>th</sup> St. Room 300 Minneapolis MN 55415-1316 Office: 612-673-5867

Office: 612-673-5867 Fax: 612-673-3173 Date: 4-4-02

RE: 3201 DIVER AVE. MOI

File No. BZZ-442, 4th war

I, <u>FAALE</u> ) 6h1501 do hereby file an exception to the Decision of the Board of Adjustment as provided for in Chapter 525.180;

525.180. Appeals of decisions of the city planning commission or board of adjustment. All decisions of the city planning commission, except zoning amendments, and all decisions of the board of adjustment shall be final subject to appeal to the city council and the right of subsequent judicial review. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of decision by the city planning commission or board of adjustment. No action shall be taken by any person to develop, grade or otherwise alter the property until expiration of the ten-day appeal period and, if an appeal is filed pursuant to this section, until after a final decision has been made by the city council. Not less than ten (10) days before the public hearing to be held by the zoning and planning committee of the city council to consider the appeal, the zoning administrator shall mail notice of the hearing to the property owners and the registered neighborhood group(s) who were sent notice of the public hearing held by the city planning commission or the board of adjustment. The failure to give mailed notice to individual property owners, or defects in the notice, shall not invalidate the proceedings provided a bona fide attempt to comply with this section has been made.

(2000-Or-034, § 2, 5-19-2000)

Further, I do hereby request that I be given an opportunity to express by case before the proper committee of the Honorable City Council.

The action being appealed and the reasons for appealing the decision are attached and made a part of this notice of exception.

Sincerely

(Name)

(Address)

(Telephone)

Eddie Hopes I 3201 Bluek Ave. No

ne) 1012 522-3309

<sup>&</sup>lt;sup>1</sup> Complete Application – includes a completed application form and attached statement explaining the basis for appeal, correct fee and mailing labels
BZZ-

# **CHECKLIST**

1.	Appeal Form (signed)
2.	Written statement of reason for appeal
3.	Fee of \$150.00 (Waived if original applicant filing)
4.	List of property owners <u>retyped on labels</u> by the person appealing
	(list can be faxed or copied) or labels reordered from:

Hennepin County Taxpayer Services Division
A-603 Gov't Center
4<sup>th</sup> Avenue South & 6<sup>th</sup> Street South
Telephone: 612-348-5910

## Nana's Nurturing Child Care Eddie Johnson

3201 Oliver Ave. No. Minneapolis, MN. 55412

Phone (612) 522-3309 Fax (612) 522-4190 Email auntiemommy! @ msn.com

April 04, 2002

To the Honorable City Council:

I was at a hearing March 27, 2002 for a variance to increase the fence height and the decision was denied. I would like to appeal that decision, because I NEED the 10 ft. fence for reasons out of my control. I have 2 day care children with (ADHD) Attention Deficit Hyperactivity Disorder. I have 11 day care children in all. I also contract with Pillsbury Crisis Nursery and Family Violence Program from Camden Neighborhood Center I was asked to contract with the program when the Director Ms. Leslie said she was driving in the neighborhood and seen my Day Care sign in my yard. And she said she need licensed day care providers, so families can receive services in directly in their community. I was also asked to sign a contract and agreed to take her infants alone with their siblings with the same day notice as crisis occur. And I wouldn't learn until the day of if any of the children from the Pillsbury Crisis Nursery would have any special needs. I also have a letter of support from my next door neighbor they have 5 little children. And during my 5 years 8 months as a day care provider the fence height increase had become a necessity at the end of year 2000 do to the hardship it was causing. As the day care children were getting older taller and stronger I seen how dangerous this could be to my neighbors little children when they are out in their yard playing and my hyper day care boys are playing basketball. It became obvious that I needed to prevent injury to my neighbors children and property. And knowing the strength energy and behavior of my day care children a ball net would have only been temporary and I need a long term solution, because I love my job and plan on serving the community for a very long time. My job is very challenging at times and you do need to be able to ask for assistance when needed. So I am appealing to you for that assistance and exception to the decision. To please allow me to keep the fence height located in the north interior side yard from a permitted 6 ft. to 10 ft. and keeping in mind that the basketball goal is 8 ft. And by licensed day care rules you have to have toys and activities for all age groups. I thank you!

Sincerely,

Eddie Johnson

Eddil Johnson



## City of Minneapolis

## Operations & Regulatory Services

John A. Bergquist Assistant City Coordinator

#### Inspections Division

Merwyn Larson Director

Connie Fournier Deputy Director

#### 250 South 4th Street - Room 300 Minneapolis MN 55415-1316

Office (612)	673-5800
Fax	673-5819
TTY	673-3300
Building	673-5842
Electrical	673-5868
Environmental	673-5897
Heating	673-5847
Housing	673-5858
Plan Review	673-5831
Plumbing	673-5845
Rental Licensing	673-5856
Zoning	673-5836

#### NOTICE

Eddie Johnson has filed an exception to the March 27, 2002 Board of Adjustment decision to deny a variance to increase the maximum fence height located in the north interior side yard from the permitted 6 ft. to 10 ft. at 3201 Oliver Avenue North.

This matter will receive an additional public hearing before the Zoning and Planning Committee of the Minneapolis City Council on Tuesday, April 23, 2002. Room 132 City Hall, 350 S. 5th St., Minneapolis, MN.

This meeting will begin at 1:30 p.m., and you are invited to attend and be heard.

This meeting place is accessible to the handicapped, and a sign language interpreter is available for deaf or hearing-impaired citizens. For scheduling, please call 673-2157 TTY/VOICE.

#### BZZ-442-A

For further information or to express support or concern, contact:

Tom Leighton, City Planner Telephone: 612-673-23853 Facsimile: 612-673-2526

E-mail: tom.leighton@ci.minneapolis.mn.us



## City of Minneapolis

#### Operations & Regulatory Services

John A. Bergquist Assistant City Coordinator

#### Inspections Division Merwyn Larson

lerwyn Larsor Director

Connie Fournier Deputy Director

#### 250 South 4th Street - Room 300 Minneapolis MN 55415-1316

Office (612) 673-5800 Fax 673-5819 TTY 673-3300 673-5842 Building 673-5868 Electrical Environmental 673-5897 Heating 673-5847 Housing 673-5858 Plan Review 673-5831 Plumbing 673-5845 673-5856 Rental Licensing Zoning 673-5836 Folwell Neighborhood Association 1206 37<sup>th</sup> Avenue North Minneapolis, MN 55412

#### NOTICE

Eddie Johnson has filed an exception to the March 27, 2002 Board of Adjustment decision to deny a variance to increase the maximum fence height located in the north interior side yard from the permitted 6 ft. to 10 ft. at 3201 Oliver Avenue North.

This matter will receive an additional public hearing before the Zoning and Planning Committee of the Minneapolis City Council on Tuesday, April 23, 2002. Room 132 City Hall, 350 S. 5th St., Minneapolis, MN.

This meeting will begin at 1:30 p.m., and you are invited to attend and be heard.

This meeting place is accessible to the handicapped, and a sign language interpreter is available for deaf or hearing-impaired citizens. For scheduling, please call 673-2157 TTY/VOICE.

#### BZZ-442-A

For further information or to express support or concern, contact:

Tom Leighton, City Planner Telephone: 612-673-23853 Facsimile: 612-673-2526

E-mail: tom.leighton@ci.minneapolis.mn.us

# HEARING AGENDA ACTIONS

## Minneapolis Board of Adjustment:

Ms. Debra Bloom

Mr. David Fields

Mr. John Finlayson

Mr. Paul Gates

Ms. Marissa Lasky

Mr. Peter Rand

Ms. Gail Von Bargen

Mr. Richard White

The Board of Adjustment of the City of Minneapolis met at 2:00 p.m., on Wednesday, March 27, 2002, in Room 220 City Hall, Minneapolis, Minnesota, to consider requests for the following:

#### 2:00 p.m.

## 2. 3201 Oliver Avenue North (BZZ-442, 4th Ward)

Eddie Johnson has applied for a variance to increase the maximum fence height located in the north interior side yard from the permitted 6 ft. to 10 ft.

## Action:

The Board of Adjustment adopted the findings and denied the variance application.

## **Minneapolis City Planning Department Report**

Variance Request BZZ - 442

Date: March 27, 2002

Date Application Deemed Complete: February 4, 2002

End of 60 Day Decision Period: April 5, 2002

Applicant: Eddie Johnson

Address of Property: 3201 Oliver Ave N

Project Name: NA

Contact Person: Eddie Johnson

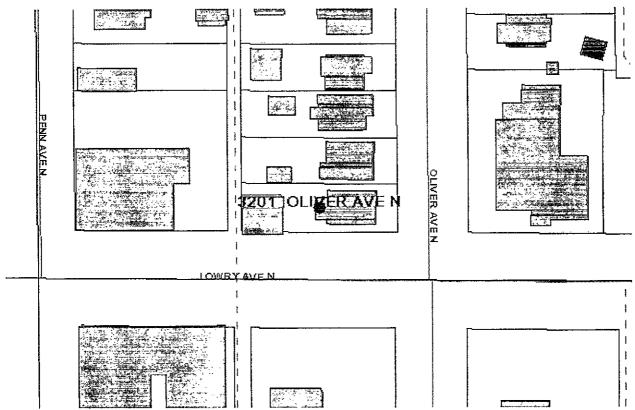
ph: 612-522-3309

Planning Staff: Thomas Leighton

ph: 612-673-3853 fax: 612-673-2526

e-mail: thomas.leighton@ci.minneapolis.mn.us

Ward: 4 Neighborhood Organization: Folwell Neighborhood Association



Existing Zoning: C1

Proposed Use: Fence

Proposed Variance: To increase the maximum height of a fence in the interior side yard from 6

feet to 10 feet.

Concurrent Review: None

Zoning Code Section Authorizing the Proposed Variance: 525.520(5). To permit an increase in the maximum height of a fence.

**Background:** The applicant owns the subject property, and utilizes it for day care and afterschool care. She has constructed a fence 10 feet high along the side yard of the property in order to keep a basketball in the yard when the kids play basketball. The permitted height of the fence is 6 feet.

The fence along Lowry Avenue at the south side of the property is 6 foot high, which exceeds the 3 foot height allowed by the ordinance. It is, however, in the public right of way. The applicant received an encroachment permit from the Department of Public Works to allow the construction of the fence.

The variance is supported by the applicant's neighbor. The Folwell Neighborhood Association has considered the application and recommends that the variance not be granted.

## REQUIRED FINDINGS FOR VARIANCE

1. The property can be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would not cause undue hardship.

The property can be put to reasonable use as a dwelling or day care center without a 10 foot fence. Because of this, strict adherence to the regulations of the zoning code do not cause undue hardship.

2. The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.

There are unique characteristics of the subject property. Unlike properties typical of similar dwelling structures, the subject property does not extend fully to the alley. A small commercial parcel has been carved out of the southeast corner of the property. This gives the property an irregular shape, and limits the area available for outside use. However, in the view of staff, it is difficult to connect this property limitation to a hardship that justifies a fence height variance. The applicant makes the argument that the limited space means that basketball play needs to be against the neighbor's yard, and the 10 foot fence height is necessary to keep the basketball play in the yard. Most fundamentally, staff does not feel that the ability to play basketball rises to the level of importance that it needs to be protected. Said another way, zoning code provisions or

property limitations preventing basketball play does not cause an undue hardship to the applicant if reasonable use of the property remains. The property remains serviceable for its current use as a day care facility, and it can still be utilized for any number of play activities. Moreover, although it would require the modification of other activity areas, there is other interior area in the backyard that could be utilized for basketball activity without the construction of a fence.

3. The granting of the variance will not be in keeping with the spirit and intent of the ordinance and will alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.

Increasing the maximum height of the fence is proposed to solve a problem related to how the property is being utilized. It is not, however, in keeping with the intent of the fence height ordinance. A 10 foot fence is imposing. It blocks the visibility of the neighboring property toward the south, and shades a good portion of its rear yard.

4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.

The proposed fence height seems unrelated to street congestion, the risk of fire or other measures of the public welfare and safety.

## STAFF RECOMMENDATION ON FRONT YARD SETBACK VARIANCES

The City Planning Department recommends that the Board of Adjustment adopt the findings above and <u>deny</u> a variance to increase the maximum height of a fence from 6 feet to 10 feet along the north interior side yard.

NANA'S NURTURING CHILD CARE Ms. Eddie Johnson 3201 Oliver Ave. North Minneapolis, MN. 55412 (612) 522-3309

November 16, 2001

To council member Barb Johnson,

This letter is to inform you that I am appling for a variance to keep an existing fence at 10 feet tall, it's on the back portion of my property. The fence was put up to prevent the day care children from throwing the balls over the fence into the neighbors yard.

I have a basketball goal in the back yard for the older day care children, and when the fence was 6 feet tall all of the balls would end up over the fence sooner or later, and considering the basketball goal is about 8 ft. tall. It was difficult keeping the balls on my property with the 6 ft. fence.

The older childrens favorite outdoor activity is basketball, so therefore I am asking for the variance to keep the 10 feet tall fence up, and this also help keep the peace and any unexpected damage to my neighbors property.

Sincerely

Me Eddie Johnson

- i) Thave a home day care business and
  it is difficult with the shorter
  fence for the children to Enjoy the
  out side activities without tons of
  interuptions which can cause hardship.
  - 2) The conditions upon which the petition for a variance is based are unique due to the fact that I have a home day care business.
  - 3) The difficulty or hardship is caused by the Zoning ordinance and not by my neighbor or myself because we both agree its a excellent solution, to prevent the day care childrens toys to Equipment from going over the fence.
    - The granting of the variance will not alter the Essential Character of the locality, it will not cause injuries to other property. But it can prevent injuries to neighbors property and it will not diminish property value.
    - 5). The proposed variance will not sub-Stantially in crease the congestion of the public streets, and it will not increase

the dance of live It will be recipie	
the danger of fire. It will however increase the safty of my day care Children and the fence will not endanger - the public safety.	2
-the public safety.	٠

## JACQUES SIMMONS JUANITA JENSEN

3207 N Oliver Avenue Minneapolisi MN 55412-2315 612.521.7379

November 19, 2001

Barb Johnson Minneapolis City Council

Dear Ms. Johnson,

This a letter to inform you and the city council that we reside next to Ms. Eddie Johnson on 32<sup>nd</sup> and Oliver Avenue North. We understand that there is a possible problem concerning the city code vs. the height of her fence on the back portion of her property.

This is a letter to accompany her application process. The fence does not pose a problem for us at this time. While Ms. Johnson continues to have a daycare at her residence, it is in the best interest for her to have a higher barrier and avoid too much of the play equipment coming over to our back yard.

If you should have any questions, or if we could be of further assistance, please feel free to contact us.

Sincerely,

Jacques Simmons

Juánita Jensen



# Folwell Neighborhood Association

A Non-Profit Organization

Visit our Web Site at folwell.org

March 15, 2002

Tom Leighton, City Planner Operations and Regulatory Services Zoning and Planning 250 South 4<sup>th</sup> Street Minneapolis, MN 55415

Re:BZZ-442

Dear Mr. Leighton:

The Executive Committee of the Board of Directors of the Folwell Neighborhood Association has acted and recommends that **no variance** be granted for the purpose of installing a 10 ft. fence located in the north interior side yard of 3201 Oliver Avenue North.

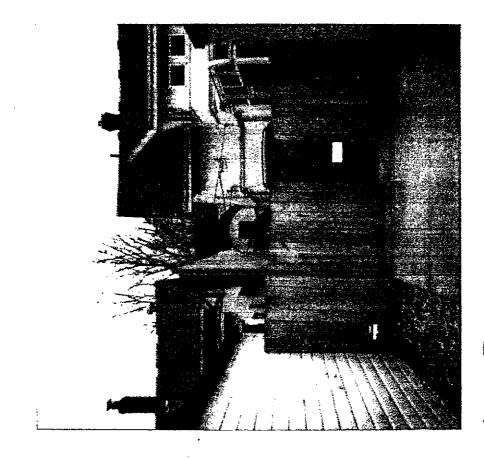
The Committee understands that the Johnson's, operated a day care out of that location, but fail to understand why a 10 ft. fence would be a necessity, or a benefit to the safety of the children that may be present.

Sincerely and on behalf of the Executive Committee,

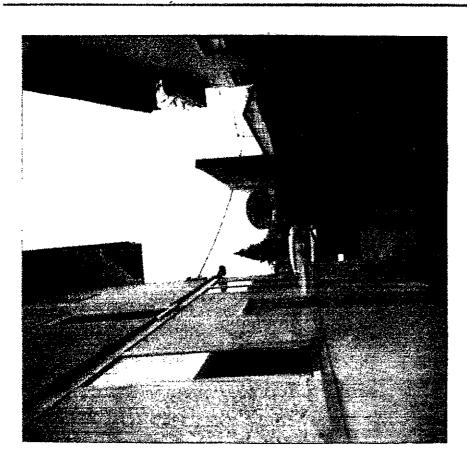
Roberta Englund
Executive Director

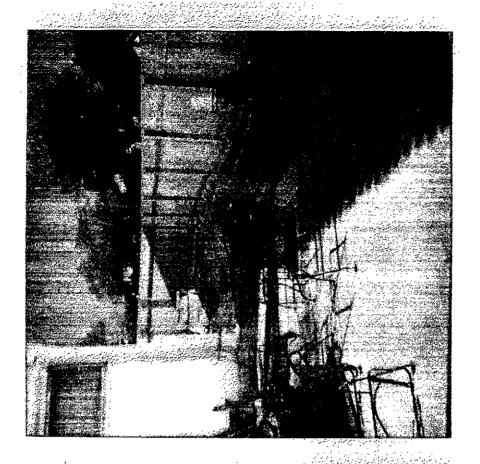
Cc: Council Member Barbara Johnson

6' word force Leuce 10, Mong Siderik 6' Farce yrought iron fonce -Neighbert A, chainlink ferce Sidenall Oliver

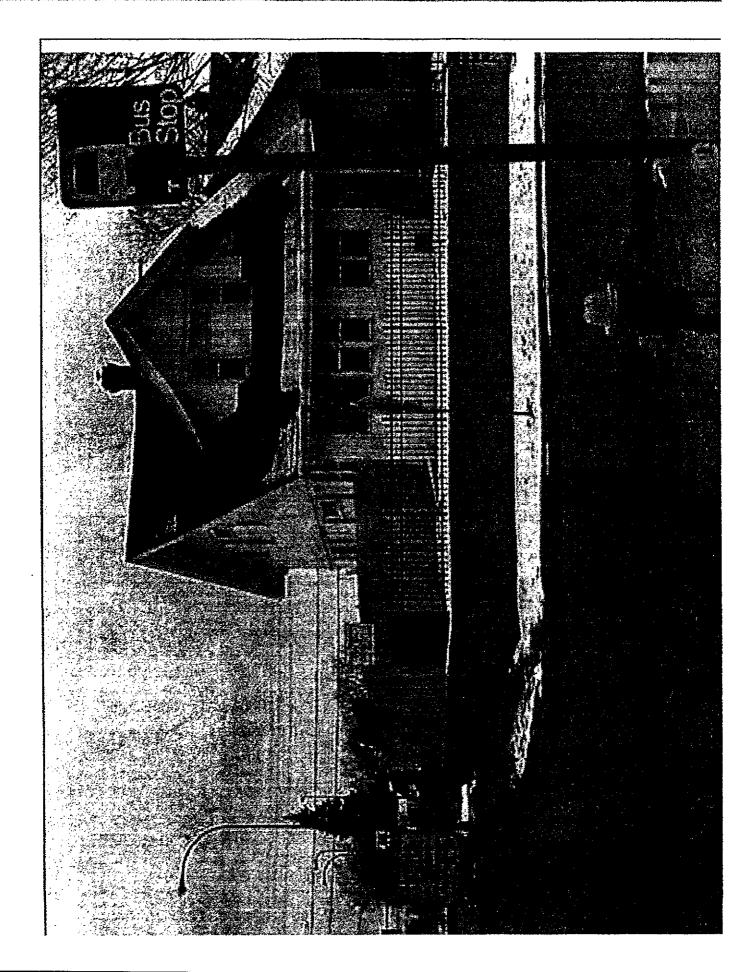


11-13-01









ddie Johnson		•	612-522-3309
3201 Oliver Av N, Mpls., M	Name of Applicant N 55412		TELEPHONE
	Address of Applicant		44.0
PPLICATION		CITY PLANNING	
D. OF ADJUST	2002	CITY COUNCIL	
ONING MAP CHANGE		- · ·	WARD 4t
ONING PLATE	OR1 3507 3	3390	INITIAL
RIA 3216 3126 3127 3126 2211 3130 3130 3130 3130 3130 3130 3130	257   3264   3267   326	2254  3262  3262  3247  3247  3239  3239  3239  3239  3225  3226  3226  3227  3226  3227  3226  3227  3226  3227  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3216  3217  3217  3218  3218  3219  3210	203 2046 3123 3118 3119 3114 371 3100 3119 3025
	APPEAU FOR VARIATION		BOARD ACTION
PETITION FOR AMENDMENT	THI LAD TOR THROATER		
PETITION FOR AMENDMENT PRESENT PROPOSED ZONING ZONING	(MILIADAY) VIIIII		

## BOARD OF ADJUSTMENT MEETING MINUTES CITY OF MINNEAPOLIS ROOM 220 CITY HALL March 27, 2002

#### CALL TO ORDER AND ROLL CALL VOTE

Present were Debra Bloom, David Fields, Peter Rand, Marissa Lasky, Paul Gates, Gail Von Bargen and John Finlayson. John Finlayson called the meeting to order at 2:00 p.m. Nicole Peterson from the Zoning Office was present, along with Hilary Watson of the Planning Department.

#### HEARING

## 1. 3201 Oliver Av. N. (BZZ-442, 4th Ward)

Eddie Johnson has applied for a variance to increase the maximum fence height located in the north interior side yard from the permitted 6-ft. to 10 ft.

## Planning Department Recommendation by Mr. Leighton:

Staff recommends denial of the variance application.

## Applicant's Statement

Eddie Johnson the applicant spoke in support stating she provides daycare for 12 children, she has provided daycare for approximately 6 years and one of the favorite outdoor activities is basketball. With this fence height variance we want to discontinue causing the activities to invade on our neighbors and their yards and some of the play equipment does that. When I put the fence up in the summer of 2000, it was a real lifesaver for our daycare. It was the best thing I could do to provide a good outdoor activity for the children. I do have a letter of support from the neighbors of the fence height. The fence has been up for one year.

## The Board of Adjustment Member (David Fields)

This fence has been up for a year? What generated the variance?

## The Board of Adjustment Member (Peter Rand)

A solution could be a net instead of a fence.

## The Board of Adjustment Member (Marissa Lasky)

The Board has previously had before us three similar fence height increase requests. One an Alzheimer home and second a home on Lake of the Isles and third a basketball court on top of a garage in the Cedar Lake area that all have been approved.

#### Action:

The Board of Adjustment adopted the findings and denied the variance application.

#### Roll Call Vote To Deny

Yeas: Bloom, Fields, Finlayson Gates, Rand, Von Bargen

Nays: None
Abstain: Lasky

The meeting adjourned at 4:00 p.m.